

AMENDED IN SENATE JUNE 27, 2002

AMENDED IN SENATE JUNE 17, 2002

AMENDED IN ASSEMBLY APRIL 22, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2441

Introduced by Assembly Member Bates

February 21, 2002

An act to add Section 3048 to the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 2441, as amended, Bates. Child abduction prevention.

Existing federal law implements the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, which provides remedies for the wrongful removal or retention of a child in cases of international child abduction.

Existing state law requires a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of specified laws of this state governing child custody proceedings to be recognized and enforced. Existing law also prohibits the abduction of a child in violation of the right of custody or visitation of a person.

This bill would enact the Child Abduction Preventive Measures Act. The bill would require a court, in cases in which the court becomes aware of facts which may indicate that there is a risk of abduction of a child, to consider specified factors in determining the risk of abduction of the child and to determine whether conditions are needed to prevent

the abduction of the child. The bill would require the court to consider imposing specified conditions to prevent the abduction of the child.

The bill would also require the Judicial Council to make changes to child custody order forms necessary for the implementation of these provisions. This provision would be operative on July 1, 2003.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known and may be cited as the
2 Child Abduction Preventive Measures Act.
- 3 SEC. 2. Section 3048 is added to the Family Code, to read:
4 3048. (a) (1) In cases in which the court becomes aware of
5 facts which may indicate that there is a risk of abduction of a child,
6 the court shall, either on its own motion or at the request of a party,
7 determine whether measures are needed to prevent the abduction
8 of the child by one parent. To make that determination, the court
9 shall consider the risk of abduction of the child, obstacles to
10 location, recovery, and return if the child is abducted, and potential
11 harm to the child if he or she is abducted. To determine whether
12 there is a risk of abduction, the court shall consider the following
13 factors:
- 14 (A) Whether a party has previously taken, enticed away, kept,
15 withheld, or concealed a child in violation of the right of custody
16 or of visitation of a person, *regardless of whether the party acted*
17 *in compliance with Section 278.7 of the Penal Code or not.*
- 18 (B) Whether a party has previously threatened to take, entice
19 away, keep, withhold, or conceal a child in violation of the right
20 of custody or of visitation of a person.
- 21 (C) Whether a party lacks strong ties to this state.
- 22 (D) Whether a party ~~possesses all of the following~~
23 ~~characteristics:~~
- 24 ~~(i) Is a citizen of another country.~~
- 25 ~~(ii) Has strong familial, emotional or cultural ties to another~~
26 ~~country.~~
- 27 ~~(iii) Has indicated that he or she may attempt to, or has~~
28 ~~threatened to, take, entice away, keep, withhold, or conceal a child~~
29 ~~in violation of the right of custody or of visitation of a person.~~
- 30 (E) Whether a party has both of the following:



1 ~~(i) Strong familial, emotional, or cultural ties to another state.~~

2 ~~(ii) Indicated that he or she may attempt to, or has threatened~~
3 ~~to, take, entice away, keep, withhold, or conceal a child in violation~~
4 ~~of a lawful custodian's right of custody or a person's right of~~
5 ~~visitation.~~ *has strong familial, emotional, or cultural ties to*
6 *another state or country, including foreign citizenship. This factor*
7 *shall be considered only if evidence exists in support of another*
8 *factor specified in this section.*

9 ~~(F)~~

10 (E) Whether a party has no financial reason to stay in this state,
11 including whether the party is unemployed, is able to work
12 anywhere, or is financially independent.

13 ~~(G)~~

14 (F) Whether a party has engaged in planning activities that
15 would facilitate the removal of a child from the state, including
16 quitting a job, selling his or her primary residence, terminating a
17 lease, closing a bank account, liquidating other assets, hiding or
18 destroying documents, applying for a passport, or applying to
19 obtain a birth certificate or school or medical records.

20 ~~(H)~~

21 (G) Whether a party has a history of marital instability, a lack
22 of parental cooperation, domestic violence, or child abuse

23 (I) Whether a party has a criminal record.

24 (2) If the court makes a finding that there is a need for
25 preventative measures after considering the factors listed in
26 paragraph (1), the court shall consider taking *one or more of* the
27 following measures to prevent the abduction of the child:

28 (A) Ordering supervised visitation.

29 (B) Requiring a parent to post a bond in an amount sufficient
30 to serve as a financial deterrent to abduction, to proceeds of which
31 may be used to offset the cost of recovery of the child in the event
32 there is an abduction.

33 (C) Restricting the right of the custodial or noncustodial parent
34 to remove the child from the county, the state, or the country.

35 (D) Restricting the right of the custodial parent to relocate with
36 the child, unless the custodial parent provides advance notice to,
37 and obtains the written agreement of, the noncustodial parent, or
38 obtains the approval of the court, before relocating with the child.

39 (E) Requiring the surrender of passports and other travel
40 documents.

1 (F) Prohibiting a parent from applying for a new or
2 replacement passport for the child.

3 (G) Requiring a parent to notify a relevant foreign consulate or
4 embassy of passport restrictions and to provide court with proof
5 of that notification.

6 (H) Requiring a party to register a California order in another
7 state as a prerequisite to allowing a child to travel to that state for
8 visits, or to obtain an order from another country containing terms
9 identical to the custody and visitation order issued in the United
10 States, as a prerequisite to allowing a child to travel to that county
11 for visits.

12 (I) Obtaining assurances that a party will return from foreign
13 visits by requiring the traveling parent to provide the court or the
14 other parent or guardian with the travel itinerary of the child,
15 copies of round-trip airline tickets, a list of addresses and
16 telephone numbers where the child can be reached at all times, or
17 an open airline ticket for the left-behind parent in case the child is
18 not returned.

19 (J) Including provisions in the custody order to facilitate use of
20 the Uniform Child Custody Jurisdiction and Enforcement Act
21 (Part 3 (commencing with Section 3400) and the Hague
22 Convention, such as identifying California as the home state of the
23 child or otherwise defining the basis for the California court's
24 exercise of jurisdiction under Part 3 (commencing with Section
25 3400), identifying the United States as the country of habitual
26 residence of the child pursuant to the Hague Convention, defining
27 custody rights pursuant to the Hague Convention, obtaining the
28 express agreement of the parents that the United States is the
29 country of habitual residence of the child, or that California or the
30 United States is the most appropriate forum for addressing custody
31 and visitation orders.

32 (K) Authorizing the assistance of law enforcement.

33 (3) If the court imposes any or all of the conditions listed in
34 paragraph (2), those conditions shall be specifically noted on the
35 minute order of the court proceedings.

36 (4) If the court determines there is a ~~substantial~~ risk of
37 abduction *that is sufficient to warrant the application of one or*
38 *more of the prevention measures authorized by this section*, the
39 court shall inform the parties of the telephone number and address



1 of the Child Abduction Unit in the office of the district attorney in
2 the county where the custody or visitation order is being entered.
3 (b) The Judicial Council shall make the changes to its child
4 custody order forms that are necessary for the implementation of
5 subdivision (a). This subdivision shall become operative on July
6 1, 2003.

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